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THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

OMB

Office of Legislative Counsel

2 MAR 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a proposed report to Chairman Staggers, House Committee on Interstate and Foreign Commerce, in response to a request for our recommendations on H.R. 10076, the "Omnibus Right to Privacy Act of 1977."

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

[redacted]
Acting Legislative Counsel STAT

Enclosure

Distribution:
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Honorable Harley O. Staggers, Chairman
Committee on Interstate and Foreign Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing in response to your request for views on H.R. 10076, the "Omnibus Right to Privacy Act of 1977." The bill proposes a number of changes in the manner in which personal information on an individual is collected, maintained and utilized. Most important from our viewpoint are Titles I and II of the bill.

Enclosed you will find comments on the bill and recommendations for several amendments. I appreciate the opportunity to comment on legislation of this magnitude. Members of my staff are available for detailed discussions on the legislation.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

STANSFIELD TURNER

Enclosure

VIEWS ON H.R. 10076

This enclosure addresses the concerns of the Director of Central Intelligence regarding H.R. 10076, the "Omnibus Right to Privacy Act of 1977."

Title I of the bill would establish a Federal Information Practice Board. The Board would be tasked with overseeing the gathering, storage and retrieval of information by the Federal Government and with monitoring the Government's compliance with various "laws that affect informational practices," most importantly the Freedom of Information and the Privacy Acts. The need for the establishment of another bureaucracy to oversee compliance is open to question. The Central Intelligence Agency has been conscientious in its attempts to comply with the Freedom of Information and Privacy Acts and, except for problems related to meeting the response time requirements, has an excellent performance record.

In addition, section 104(a)(1) of Title I provides that the Board would have access to all information and data in the possession of the Federal Government. This would appear to include all levels of classified information and, in the case of the Central Intelligence Agency, information relating to sensitive intelligence sources and methods. The bill, however, contains no requirement that members or employees of the Board having access to sensitive information obtain appropriate security clearances or access approvals. This problem could be rectified by deleting line 11, page 10 and substituting:

> "tion or data, provided, however, that the Board and its employees shall obtain all necessary security clearances. Disclosure by the Board of such ... "

and by deleting "otherwise" at line 12, page 10.

Title II of the bill would extensively amend the Privacy Act (5 U.S.C. 552a). Section (j)(1) of the Privacy Act grants the Director of Central Intelligence the authority to exempt records of the Central Intelligence Agency from a number of the provisions of the Act. Title II of H.R. 10076 does not contain such an exemption.

The authority granted by the Privacy Act is necessary to protect intelligence sources and methods (a responsibility given the Director by 50 U.S.C. 403(d)(3)), to protect information obtained from other agencies and foreign services and to protect sensitive national security information. It has been applied to six specific portions of the Privacy Act--(c)(3), (d), (e)(3), (e)(4)(G), (f)(1), and (g)--and then only as necessary to protect the information on the limited grounds just mentioned. Exercise of this power to exempt the Central Intelligence Agency has not diminished its responsiveness under the Privacy Act by any appreciable degree, but it has permitted the protection of very sensitive intelligence information.

The problems presented by the sections of the Privacy Act mentioned above were recognized by Congress when it provided the Director of Central Intelligence the authority to exempt the Central Intelligence Agency from many provisions of the Act. These same problems are presented by Title II of H.R. 10076, and, if the Director is to be able to fulfill his statutory responsibility to protect intelligence sources and methods, any revision of the Act must grant an exemption power.

In addition, two subsections of proposed section (e) of the Omnibus Right to Privacy Act would prohibit the Central Intelligence Agency from carrying out acts essential to the performance of its mission. The problems are outlined below. Again, the grant of an exemption power to the Director of Central Intelligence would resolve them without damaging the thrust of the legislation.

Proposed section (e)(1)(B) of the Omnibus Right to Privacy Act (page 32, line 12) provides that each agency that collects or maintains individually identifiable records must provide U.S. citizens or aliens lawfully admitted for permanent residence from whom it requests information with a significant amount of information about the request and the requesting agency. The Central Intelligence Agency has a need to conduct certain investigations, in the area of security suitability of applicants for example, under circumstances which do not disclose Agency interest. This section, however, apparently would prevent the Agency from conducting such investigations.

Subsection (e)(2) of the proposed Act (page 35, line 16) would limit the situations in which information regarding an exercise of First Amendment rights could be collected. The Central Intelligence Agency monitors foreign radio broadcasts, newspapers, etc., in order to determine, for example, foreign media reaction to statements by the President, Members of Congress and other persons. Such information is very useful to policy makers, but this subsection of the proposed Act would seem to prohibit the Agency from performing this function. Furthermore, foreign media are known to employ American citizens. Because the citizenship of the author of an article cannot be determined by the by-line, this proposed section could preclude the Agency from reporting on any media presumed to employ U.S. citizens. As a result, performance of this mission would be seriously impaired. This section could also conflict with the statutory responsibility of the Director of Central Intelligence for protecting intelligence sources and methods in that it could be construed to prohibit review of manuscripts, speeches, etc., of persons who have access to such information because of their relationship with the Agency. Such review is necessary to insure that sources and methods information is not disclosed. These clearly are not the types of activity which the bill seeks to prevent, yet its broad terms would have a serious impact on such functions.

Several of the provisions of the proposed Act are either unrealistic or burdensome. Section 202(b)(6) would require a determination within 30 working days of receipt of a request as to what information will be released and notification to the requestor of the determination. Because of the large volume of material and the review necessitated by its sensitivity, this limit appears unrealistic and should be revised. Permitting an additional 30 days for each 200 pages to be reviewed, for example, would bring the limitation more in line with current realities. In addition, proposed subsection (b)(1)(A)(ii) increases each entity's responsibility for searching pertinent records. It speaks of searching records of which an agency "can be reasonably expected to be aware" and of "substantially similar" and "derivative versions" of records. This requirement is so open-ended that it provides no direction at all; who could say with certainty when such requirements have been met? Even assuming that the standard is manageable, it would impose an almost impossible burden, especially in light of the 30-day requirement discussed above. These comments also apply to that part of the definition of "accessible record" found in subsection (a)(6)(B) of the proposed Title II.

In addition, section (q) should be amended to make clear that an individual may not use the Privacy Act or the Freedom of Information Act to obtain information, the disclosure of which is prohibited under a separate statute. This amendment would clarify the effect of the two Acts on other statutes and could be accomplished by adding a new subsection (3) to section (q) of the proposed Act.

Subsection (e)(1)(D) of the proposed Act contains an exemption which permits the Central Intelligence Agency to maintain unverified or otherwise potentially inaccurate information. This exemption is an absolute necessity for an intelligence gathering agency and should be expanded to include other agencies and departments in the Intelligence Community.

Title III of the bill, the "Protection of Personal Records Act," provides protection for an individual's credit record, financial record, toll record and insurance record and for consumer reports on an individual. Proposed section 312 would forbid the transfer of this information from one Federal agency to another, unless authorized by statute. This provision would seem to forbid the transfer of security suitability information between organizations in the Intelligence Community. As a result, each element in the Community would be required to conduct its own security investigation before granting a security clearance, a great waste of time and money. This could be remedied by deleting the period at page 67, line 10 and adding the following:

> "or where the information is necessary to the determination of an individual's eligibility for a security clearance or for access to classified information."